IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

RSA No. 3049 of 2002
Date of decision : 14.9.2006.

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Parties Name

Ashok Kumar

..... Appellant

vs.

Murti Shri Durga Bhawani Trust (Hetuwali), G.T. Road, Karnal through Bhagwat Sarup its Trustee and others

.....Respondents

Coram: Hon'ble Mr. Justice S.N. Aggarwal

Present: Sh. Ashish Aggarwal, Advocate
for the appellant.

Sh. Mahavir Sandhu, Advocate
for respondents No. 1 to 4.

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S.N. Aggarwal, J.

The questions of law and facts involved in RSA No.3049 of 2002 and in RSA No. 3050 of 2002 are the same. Therefore, both the appeals are being decided by this common judgment. However, the facts are taken from RSA No. 3049 of 2002.

The appellant was inducted as a tent in shop No. 35 vide rent deed dated 29.8.1978 on the monthly rent of Rs.200/-. The shop in dispute was constructed in January 1976 and therefore, the provisions of Haryana Urban (Control of Rent and Eviction) Act, 1973 (in short

'the Rent Act') did not apply for a period of 10 years to the demised premises. The appellant had failed to pay the arrears of rent with effect from 1.5.1985. Accordingly, notice under Section 106 of the Transfer of Property Act was served on him on 7.6.1985, which was received by the appellant on 9.6.1985. Since the appellant failed to hand over the vacant possession of the shop in dispute to the respondent, therefore the respondent filed the suit for possession and for recovery of arrears of rent. The appellant filed the written statement and contested the case. Legal objections were also pleaded that the ejectment petition could be filed only in the Court of Rent Controller. The execution of rent note dated 29.8.1978 was also denied. It was pleaded that signatures of the appellant were obtained on blank papers, which might have been converted into the execution of the rent note. The shop was not newly constructed shop but only minor repairs were introduced in the year 1974.

Issues were framed. The parties led the evidence. The learned trial Court came to the conclusion that the construction of the shop was completed in the year 1976 and therefore, the provisions of the Rent Act did not apply to the building under reference. Accordingly, the suit for possession was decreed by the learned trial court vide judgment and decree dated 8.12.1998.

The appellant filed the appeal. The findings of the learned trial Court were upheld by the learned Lower Appellate Court and the appeal filed by the appellant was dismissed vide judgment and decree dated 14.5.2002.

Hence, the present appeal.

The submission of the learned counsel for the appellant was that the respondents have failed to prove if the shop was constructed within the period of 10 years immediately before the filing of the suit for possession. It was submitted that in the year 1974 they had only renovated the building, while it was constructed much earlier. It was further submitted that the best evidence for the respondents was to produce the record of the Municipal committee to prove as to the date on which the suit plan was got approved and the date on which the construction was completed. Since the respondents have not produced that evidence, they could not succeed. In support of this submission reliance was placed on the judgment of the Hon'ble Supreme Court reported as **Ram Saroop Rai vs. Smt. Lilavati** AIR 1982 Supreme Court 945.

These submissions have been considered. Admittedly, the respondents had proved a copy of the resolution dated 31.3.1976, which revealed that the construction of the shops No. 35, 36 and 36-A was completed and its payment was approved. In order to ensure the genuineness of this resolution, the original register was called from the office of the respondents and it was perused at the time of arguments by this court. It was the register regularly maintained in the ordinary course of its functioning and is a public document, in which there was a resolution dated 31.3.1976 to the effect that the construction was completed a little before and payment of expenditure was approved. Therefore, this entry of resolution could not have been falsely introduced later on. This is a very material piece of evidence to show that the construction of shop was completed a

little before, on 31.3.1976.

No doubt, the Hon'ble Supreme Court was pleased to observe that the record from the Municipal Committee was the best evidence, but even if the Municipal record has not been produced, it does not mean that all other evidence has to be rejected, which proved the same fact. The resolution dated 31.3.1976 is entered in a register which is maintained in the ordinary course of business and is a part of the public record. There are resolutions passed earlier to that and thereafter also. It is recorded in the middle of the Register and therefore, could not have been forged later on. That record undoubtedly proves that the construction of the shop was completed only by that time and the payment was approved.

In the reported judgment, besides the Municipal record, there was only an oral statement of the witness and the Hon'ble Supreme Court was pleased to observe that oral statement is of no consequence. Therefore, the facts of that case were entirely different. In the present case, besides the oral evidence, the respondents have led satisfactory documentary evidence in support of their version and resolution dated 31.3.1976 passed which is entered in a register maintained in the ordinary course of its functioning, is a valuable piece of evidence. It is, therefore, held that the construction of the shop was completed within the period of 10 years from the date when civil suit for possession was filed by the respondents against the appellant.

Therefore, the concurrent findings of fact recorded by the learned Courts below are upheld.

No substantial question of law arises.

There is no merit in the present appeal and the same is dismissed.

The learned counsel for the appellant prays for time to vacate the premises. The appellant is granted two months time from today subject to the condition that he deposits all the arrears of rent within 15 days from today.

(S.N.Aggarwal)
Judge

14.9.2006.
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